

MONTSERRAT

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 5 of 1991

BETWEEN:

WILFRED WHITE	Appellant
and	
THE COMMISSIONER OF POLICE	Respondent

Before: The Honourable Chief Justice Floissac - President
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. Justice Matthew J.A. (Ag)

Appearances: Mr. K. Allen for the Appellant
Mrs. G. Thom for the Respondent

1992: May 6, 7 and 8

JUDGMENT

MATTHEW, J.A. (Ag.)

On November 5, 1991 the Appellant was convicted at the Magistrate's Court, Plymouth before His Worship Mr. H. E. Sergeant for that he between the 25th September, 1991 and 14th October, 1991, did dishonestly appropriate one female sheep valued at \$180.00 EC, the property of Peter Hogan, with the intention of permanently depriving the said Peter Hogan of the said sheep, contrary to Section 210 (a) of the Penal Code No. 12 of 1983. He was fined \$250.00 to be paid within one month or in default one month's imprisonment.

On November 13, 1991 the Appellant gave notice of appeal against the decision of the learned Magistrate. The Appellant advanced two grounds of appeal, namely:

1. The decision is erroneous in point of law;
2. The decision is unreasonable and cannot be supported having regards to the evidence.

The brief facts of the case are that one Peter Hogan bought some time ago, a brown sheep from Leroy Meade and that in September, 1991 the sheep gave birth to a white ram lamb and that around the time of the General Election of Montserrat (October 8, 1991) he lost that sheep. He said he made a report

to the police and continued to search for the sheep and that on October 14, 1991, he saw the sheep in a garden over which the Appellant had control. He said he observed a fresh mark on the sheep's ear. Leroy Meade stated that in March, 1991 he sold a sheep to Peter Hogan. Meade saw a sheep brought to him by Sgt. Hazell and Peter Hogan and he concluded it was the same sheep he had sold to Peter Hogan. He also testified as to the freshness of a mark on the ear of the sheep.

Christiana Meade, the wife of Leroy Meade, testified that Peter Hogan bought a sheep from herself and her husband. She gave the approximate date of sale as four or five months after Hurricane Hugo. We were told that the dates of the hurricane were September 17 and 18, 1989. Christiana said that on Monday October 14, 1991, she met Peter Hogan, some police personnel and the wife of the Appellant and she identified the sheep she had sold to Hogan.

Another prosecution witness, Dr. Gary Swanston, a veterinary officer, examined the sheep on October 15, 1991 and concluded that the uterus showed active signs that it was involuting from having given birth within the last 30 - 45 days, thus supporting the testimony of Peter Hogan.

In his examination in chief the Appellant stated that he came into possession of the sheep on October 6, 1991 having purchased it from David Ryan, also known as Rowdy Ryan, on that day.

It is not disputed that the sheep was found in the possession of the Appellant and it is equally clear that no one saw him steal the sheep from Peter Hogan. The charge of dishonest appropriation must therefore depend on the doctrine of recent possession.

In the 43rd edition of ARCHBOLD'S CRIMINAL PLEADING, EVIDENCE AND PRACTICE, Volume 2, paragraph 18 - 169 the learned authors deal with the topic, "RECENT POSSESSION AS EVIDENCE OF GUILTY KNOWLEDGE." They state:

"The onus of proving guilty knowledge or belief always remains on the prosecution. Where the only evidence against the defendant is that he was in possession of recently stolen property, the jury should be directed that they may infer guilty knowledge (i) if the defendant has offered no explanation to account for his possession of the property, or (ii) if they are satisfied that any

explanation consistent with innocence which has been given is untrue."

The Appellant in this case offered an explanation to the effect that he had bought the said sheep from Ryan six days previous to the date when Hogan found it. When the police first went to Ryan the latter agreed he had sold the sheep to the Appellant. When the police returned to interview Ryan a second time, four days later, Ryan said he was lying on the first occasion to oblige the Appellant.

The learned Magistrate clearly did not accept the truthfulness of the explanation of possession offered by the Appellant. In his reasons for decision at page 13 of the record he said: "I found as a fact that the sheep in question was the one that Peter Hogan had reported lost to the police. The evidence of the veterinary doctor supports the evidence of Hogan."

The first ground of appeal is to the effect that the witness Ryan is an accomplice and by the Magistrate's finding that the witness was not an accomplice, he did not take cognizance of the state of the law and could not properly have directed himself as to the "caution" with which the evidence of Ryan ought to have been viewed. Additionally, this ground included the words, "nor could he properly have directed himself on the doctrine of recent possession." This last addition is unwarranted for there is nothing in the record nor were any submissions made to indicate that the learned Magistrate failed to direct himself on the issue of the doctrine of recent possession.

Learned Counsel for the Appellant referred us to a passage from Blackstone's Criminal Practice 1991, paragraph F5. 17 which states:

"In common parlance, the term 'accomplice' describes one who has in some way been involved culpably in the wrong doing in question" and to the cases:

R v MALEK AND REYES (1966) 10 WIR 97;

JACOBS v MATTHEWS (1963) 5 WIR 442.

Our attention was also directed to the case,

DAVIES v DIRECTOR OF PUBLIC PROSECUTIONS 1954 1 AER 507 by the learned Counsel for the Respondent.

The Court does not find it necessary to go into the question as to whether or not Ryan was an accomplice, but on the assumption that he was such an accomplice there is an abundance of corroborative evidence to support the

conviction; and although the learned Magistrate evidently did not warn himself of the danger of convicting on the uncorroborated evidence of Ryan, no miscarriage of justice has occurred. In my judgment this ground of appeal fails.

The second ground of appeal relates to the identity of the sheep. Counsel for the Appellant drew attention to the various dates given by Leroy Meade, Christiana Meade and Peter Hogan as to the date of sale of the sheep by the Meades to Hogan. Peter Hogan stated in examination in chief that he bought the sheep in September but he did not say the year. However, he said in September, 1991 the sheep gave him a lamb. Under cross-examination he said that he bought the sheep in 1989. Leroy Meade stated that he sold the sheep to Hogan in March, 1991. Christiana Meade's recollection is that the sale took place about four to five months after Hurricane Hugo which puts the date to be about January or February, 1990. On that basis learned Counsel submitted that the time differences was relevant to the issue of identity of the sheep.

In his reasons for decision at page 14 of the record the learned Magistrate referred to the fact that there was conflicting evidence as to the date Hogan bought the sheep, and after considering the conflict came to the conclusion that the sheep was in fact sold in 1989.

I do not think the conflict in the dates of sale have much bearing on the question of identity of the said sheep. As I stated above, the prosecution witnesses have amply demonstrated that the sheep which Hogan lost was the same one sold to him by the Meades which found its way into the possession of the Appellant.

This ground of appeal likewise fails. I would therefore dismiss the appeal.

I concur


A. N. J. MATTHEW
Justice of Appeal (Ag.)


V. F. FLOISSAC
Chief Justice

I concur


C. M. D. BYRON
Justice of Appeal